H. RUBBER ESTATES BHD. v. DIRECTOR-GENERAL OF INLAND REVENUE

[F.C. (Gill C.J. (Malaya), Syed Othman F.J. and Abdul Hamid J.) October 7, 1978]

[Kuala Lumpur — Federal Court Civil Appeal No. 76 of 1977]

Revenue Law — Income Tax — Rubber plantation sold to another company — Redundancy payments paid to workers by company — Whether deductible from gross income of company — Whether expense wholly and exclusively incurred in production of income —Income Tax Act, 1967, ss. 33(1) and 127 and Schedule 6 paragraph 15.

Interpretation of Statutes — Income Tax Statute — Literal Construction — Statute to be read as a whole.

The appellant company sold its rubber plantation to another company under an agreement which provided that the other company should pay and discharge all the debts, liabilities and obligations of the appellant. The appellant had served notices of termination of employment on eighty-nine of its workers before the agreement and had to pay redundancy payments amounting to $26,023, which was in fact paid by the other company on its behalf. The company sought to deduct the sum of $26,023 from its income but this was disallowed by the Director-General of Inland Revenue. On appeal the Special Commissioners held that the obligation to pay was that of the appellant company, that section 127 and paragraph 15 Schedule 6 of the Income Tax Act, 1967 had no application and that the payments could not be regarded as outgoings or expenses wholly and exclusively incurred in the production of the gross income within the meaning of section 33 of the Income Tax Act, 1967 and as such were not deductible for income tax purposes. On appeal to the judge of the High Court, it was contended that the Special Commissioners were wrong in holding that section 127 and paragraph 15 of Schedule 6 were not applicable. Abdul Razak J. dismissed the appeal and the appellants appealed to the Federal Court.

Held: (1) the redundancy payments could not be called income for the employer and the payments could only be deducted from his gross income if they were legitimate outgoings and expenses wholly incurred in the production of his gross income. The relevant provision applicable was therefore not section 127 read in conjunction with paragraph 15 of the Schedule 6 of the Income Tax Act, 1967 but section 33 of the Act;

(2) both the Special Commissioners and the High Court had held that the payments were not outgoings or expenses incurred in the production of the income and therefore they were right in holding that the sum of $26,023 could not be deducted in ascertaining the adjusted income of the appellant.

Cases referred to:-

(1) *Grey* v. *Pearson* (1857) 6 H.L.C. 61, 106.

(2) *Vacher & Sons Ltd.* v. *London Society of Compositors* [1913] A.C. 107, 117.

(3) *Quebec Railways Light Heat and Power Co. Ltd.* v. *Vandry* [1920] A.C. 662, 673.

(4) *Cargo ex Argos* L.R. 5 P.C. 134, 153.

(5) *Vestry of the Parish of St. John* v. *Henry Horace Powell Cotton* (1887) 12 App. Cas. 1, 7.

(6) *Oriental Bank Corporation* v. *Wright* 5 App. Cas. 842, 856.

(7) *Inland Revenue Commissioners* v. *Hinchy* [1960] A.C. 748.

(8) *Secretary of State in Council of India* v. *Sir Andrew Scoble* [1903] A.C. 299.

HIGH COURT.

In the High Court the following judgment was delivered:

Abdul Razak J.: This is an appeal from the Special Commissioners of Income Tax on a case stated under Schedule 5 of the Income Tax Act, 1967.

The sole issue before them was whether the sum of $26,023 being redundancy payments paid to the appellant's workers on the disposal of its rubber estate was deductible from its gross income as being outgoings and expenses wholly and exclusively incurred during that period for the year of assessment 1974 in the production of gross income within the meaning of section 33(1) of the Income Tax Act, 1967.

The facts briefly were that H. Rubber Estate under an agreement made on December 30, 1973 sold its estate and all its property to R. Rubber Estate and became merged with the latter on the 1st of January, 1974. By the dissolution, the workers of H. were served with notice to terminate their services in November 1973 and their employment would cease on December 31, 1974. Under the terms of the agreement entered into in 1969 between the Malayan Agricultural Producers Association of which H. was a member and the National Union of Plantation Workers, the workers were to receive redundancy benefits on account of their services being terminated through the sale of the estate. Payments thereof were made in January 1974 by R. by virtue of clause 5(a) of their agreement with H. by which R. undertook to bear such payment incurred before January 1, 1974. The amount was however charged to the profit and loss account of H. for the year ending December 31, 1973. These payments would have been made in 1973 if not for the fact that income tax clearance had to be obtained.

The Special Commissioners found that the appellants were under a duty to pay their employees compensation disagreeing with revenue that these payments were made on compassionate grounds or else were payable and was paid by R. They nevertheless found that the payments were still liable to tax as being made not wholly and exclusively in the production of gross income within the meaning of section 33(1) of the Act. They sum up their reasons thus:

"And it must be finally observed that the said payments of $26,023 to the workers was made in order to enable it to sell its rubber plantation and to terminate its business of rubber planting rather than to enable it to merge with persons and to produce income. We, therefore, found that the redundancy payment was not an outgoing or expenses incurred by the appellant in the production of income under section 33(1) of the Income Tax Act 1967 and held that the said sum of $26,023 was not deductible in ascertaining its adjusted income for the year of assessment 1974."

The Commissioners went on also to find that paragraph 15 of Schedule 6 of the Act did not apply to exempt the said payments from tax under section 127(5) of the said Act because these exemptions only apply to income specified in the Schedule which were in the hands of the recipient. They did not however elaborate as to how they came to the latter conclusion.

The appellant has now come before me to say that the Special Commissioner's finding that the said payments were not exempted by paragraph 15 of the Schedule 6 was wrong. They conceded at the outset however that the Commissioner's finding that the payments were not made wholly and exclusively in the production of income was correct. Counsel's argument was therefore strictly confined to the interpretation of section 127 of the Act read with paragraph 15 of Schedule 6.

It was argued that paragraph 15 of the Schedule applied to payment by the employer if not to both

payment by the employer and receipts by the employee. It was contended that if payments in the hands of the recipient only was envisaged, then the legislature would have said so expressly by the insertion after the word "payment" the words "received by the employer" or words to that effect. Since these words were absent it was urged the word "payment" must therefore be given its ordinary meaning and the exemption must apply to the employer. Reference was made to *Maxwell* on Interpretation of Statutes (12th Edition) with particular emphasis on the literal construction of words. I would merely echo the passage at page 28.

"The safer and more correct course of dealing with the question of construction is to take words themselves and arrive if possible at their meaning without, in the first instance, reference to cases."

I cannot agree with counsel more on the principle enunciated. But it must also be said that to give a literal construction to a word without regard to the circumstances surrounding it which brought it into existence might merely lead one dangerously to a construction which would act to defeat if not to nullify the whole object of the statute. Regard must be had to the other equally important canon of construction that the statute must be read as a whole. (See *Odgers* 5th Edition p. 237). It is true that the words in paragraph 15 are plain but the paragraph is merely ancillary to section 127 of the Act. Consequently its meaning must be governed if not limited by the parent section, otherwise the words of the paragraph can simply be taken out of their proper context and given a meaning to it which is utterly misleading and erroneous. As *Maxwell* at page 47 said

"Every clause of a statute is to be construed with reference to the context and other clauses of the Act so as, as far as possible, to make a consistent enactment of the whole statute."

Section 127 of the Act is explicit that only "income" shall be exempt from tax. The word "income" is a collocation of the words "come" and "in". The *Oxford Dictionary* defines it as that which comes in as the periodical produce of one's work, business investment and the like. It must follow that the income envisaged under the Act is income after the deduction of expenses under section 33(1). But having thus said in section 33(1) that only *payments* wholly and exclusively made in the production of gross income can be exempt from tax, how could it conceivably be said also that the legislature intended to say that *payments* which were *not* so made were nevertheless exempt under the 6th Schedule? That would in my view in effect cause the obliteration of the latter provision by the earlier one which could hardly be the presumed intention of Parliament. Parliament thus appear to be *in dire* conflict without a remedy. But *Maxwell* at page 187 had this to say in aid

"On the general principle that an author must be supposed not to have intended to contradict himself, the court will endeavour to construe the language of the legislature in such a way as to avoid having to apply the rule, *leges posteriores priores contrarias abrogant.*"

Clearly, therefore the word "payment" in paragraph 15 must be construed in no other way except that it was plainly meant to refer to payment in the hands of the employee.

An illuminating aid in construing the word may be found by examining the same and other paragraphs of the schedule. One will note that the provision of paragraph 15 itself seeks to remove any inherent doubt in the language. Under it payment made to the director who is not a whole time service director is not exempt from payment of tax. If the payment in the paragraph is said to exempt to payment of compensation by the employer then why should there be any difference whether it is made to the whole time or part time service director for the purpose of payment of income tax by the employer as long as the compensation is made in respect of the employee's termination. If it is said that the employer must pay tax for the part time worker presumably because generally logically the employer would pay less compensation to him in comparison with the full time worker then a reasonable assumption should be that the legislature would have scaled down proportionately the amount of the income tax rather than taking away the exemption altogether.

The only possible way to explain these apparent inconsistencies is to say that it would be highly unreasonable to ask an employee to pay tax when he has already had to suffer the fate of having to lose the means of doing so. Whereas a part time employee has not totally lost it because he would still be employed elsewhere.

The other paragraphs in the Schedule should also be looked at to determine the true meaning of paragraph 15. *Maxwell* on page 58 says:

"Passing from the external aspects of the statute to its contents, it is an elementary rule that construction is to be made of all the parts together, and not of one part only by itself. It has been said that one of the safest guides to the construction of sweeping general words which are hard to apply in their full literal sense is to examine other words of like import in the same instrument and to see what limitations must be imposed on them; and if it is found that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a like limitation and qualification.

Individual words are not considered in isolation, but may have their meaning determined by other words in the section in which they occur."

If one looked at the other paragraphs it will make it quite clear that the exception is applicable only to those who have the money in their hands because these paragraphs relate to emoluments, income, pensions, allowances and sums received by the recipient. Against these preponderance of instances of money having been received it is difficult to see how paragraph 15 could be read to mean completely otherwise.

But if, on the other hand, these arguments run along the line that the words of paragraph 15 are wide enough to cover payment either by the employer or money received by the employee and it is a matter of choice which one Revenue would elect to exempt then it is a matter of discretion and not right for Revenue to act and the fact that Revenue has chosen the employee rather than the employer is therefore no ground for asking a redress.

Against these arguments and the fact that between the employer and the employee it is the latter in the long run who would stand to lose in a termination by necessarily being left without a job it is difficult

to say that the legislature intended to compensate the employer rather than the employee by giving exemption to the former rather than the latter.

In the circumstances I would dismiss the appeal and order that the assessment of income tax for the year of assessment 1974 as contained in the notice of additional assessment dated November 30, 1974 in respect of the appellant be confirmed. I would also order cost to be paid by appellant for this appeal.

From the above judgment the appellant appealed to the Federal Court.

FEDERAL COURT.

N.T. Rajah for the appellant.

Zulkifli Mahmood (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Gill C.J. (Malaya): This is an appeal from a judgment of Abdul Razak J. dismissing the appellant's appeal from a decision of the Special Commissioners of Income Tax that the sum of $26,023 paid as redundancy benefits by the appellant company to its workers on the disposal of its rubber estate was not deductible from its gross income as outgoings and expenses wholly and exclusively incurred during the period for the year of assessment 1974 in the production of its gross income within the meaning of section 33(1) of the Income Tax Act, 1967.

The facts of the case are not in dispute. The appellant company, which was incorporated in 1914, owned a rubber plantation known as H. Rubber Estates. By an agreement dated the 30th day of December, 1973 the said rubber plantation was acquired by R. Rubber Estates Berhad which was incorporated in 1936. The agreement provided that, as part of the consideration, R. Rubber Estates Berhad should undertake, pay, satisfy and discharge all the debts, liabilities and obligations of the appellant.

Prior to the said agreement the appellant was a member of the Malayan Agricultural Producers Association which had entered into an agreement with the National Union of Plantation Workers, of which the workers on the appellant's rubber plantation were members for payment of redundancy benefits to workers whose services were terminated on grounds of redundancy. The appellant had served notices of termination of employment on 89 of its workers in November 1973.

Under the agreement between the Malayan Agricultural Producers Association and the National Union of Plantation workers those 89 workers became entitled to a sum of $26,023 as redundancy benefits, which sum was charged to the Profit and Loss account of the appellant for the year ended December 31, 1973, although actual payment was made in 1974 by R. Rubber Estates Berhad on behalf of the appellant in accordance with the terms of the agreement of December 30, 1973. In ascertaining the adjusted income of the appellant for the year of assessment 1974, based on the accounts for the year ended December 31, 1973, the Director-General disallowed the said sum of $26,023 as a legitimate charge to the income.

When the matter went up to the Special Commissioners it was contended on behalf of the appellant that the sum of $26,023 was an expense wholly and exclusively incurred in the production of income for the year 1973 and therefore deductible from the gross income for the year 1973. Alternatively it was contended that it was exempt from income tax by virtue of section 127 of the Income Tax Act and paragraph 15 of Schedule 6 thereto. The respondent, on the other hand, contended that the redundancy payments were made on compassionate grounds, that there was no obligation to make such payments, that the amount paid could not be deducted under section 33 of the Act, and that section 127 and paragraph 15 of the Schedule had no relevance.

The Special Commissioners found that the appellant had made the payment on compassionate grounds, that prior to January 1, 1974 H. and R. were two separate entities, that the redundancy having occurred in 1973 the obligation to pay was that of H., that section 127 and paragraph 15 Schedule 6 had no application and that the payments could not be regarded as outgoings or expenses wholly and exclusively incurred in the production of gross income within the meaning of section 33 of the Income Tax Act and as such were not deductible for income tax purposes.

At the hearing of the appeal before the learned appellate judge the appellants conceded that the Special Commissioners were correct in their findings except that which related to section 127 and paragraph 15 of the Schedule 6 of the Income Tax Act, so that the appeal proceeded on the basis of the interpretation of section 127 read in conjunction with paragraph 15 of Schedule 6.

It was argued by the appellants that paragraph 15 of the Schedule applied to payments by the employer if not both to payments by the employer and receipts by the employees, it being contended that if payments in the hands of the recipients only were envisaged, then the legislature would have said so expressly by the insertion after the word "payment" the words "received by the employee" or words to that effect. Since these words were absent it was argued that the word "payment" must be given its ordinary meaning and the exemption must apply to the employer. Reference was made to the following passage at page 28 of *Maxwell* on Interpretation of Statutes (12th Edn.):

> "The safer and more correct course of dealing with the question of construction is to take words themselves and arrive if possible at their meaning without in the first instant reference to cases."

In dealing with the argument the learned judge says in his judgment that he could not agree with counsel more on the principle enunciated, but he goes on to add that it must also be said that to give a literal construction to words without regard to circumstances surrounding them, which brought it into existence, might merely lead one dangerously to a construction which would act to defeat if not to nullify the whole object of a statute. His Lordship further says that regard must be had to other equally important canon of construction that the statute must be read as a whole, as stated at page 237 of *Odgers'* Construction of Deeds and Statutes (5th Edition). The

conclusion at which the learned judge arrived is stated in his judgment as follows:

"It is true that the words in pragraph 15 are plain but the paragraph is merely ancillary to section 127 of the Act. Consequently its meaning must be governed if not limited by the parent section, otherwise the words of the paragraph can simply be taken out of their proper context and given a meaning to it which is utterly misleading and erroneous. As *Maxwell* at page 47 said 'Every clause of a statute is to be construed with reference to the context and other clauses of the Act so as, as far as possible, to make a consistent enactment of the whole statute'. Section 127 of the Act is explicit that only 'income' shall be exempt from tax. The word 'income' is a collocation of the words 'come' and 'in'. The Oxford Dictionary defines it as that which comes in as the periodical produce of one's work, business investment and the like. It must follow the income envisaged under the Act is income after the deduction of expenses under section 33(1). But having thus said in section 33(1) that only *payments* wholly and exclusively made in the production of gross income can be exempt from tax, how could it conceivably be said also that the legislature intended to say that *payments* which were *not* so made were nevertheless exempt under the 6th Schedule? That would in my view in effect cause the obliteration of the latter provision by the earlier one which could hardly be the presumed intention of Parliament. Parliament thus appear to be in dire conflict without a remedy. But *Maxwell* at page 187 had this to say in aid 'On the general principle that an author must be supposed not to have intended to contradict himself, the court will endeavour to construe the language of the legislature in such a way as to avoid having to apply the rule, *leges posteriores, priores contrarias abrogant.*' Clearly, therefore the word 'payment' in paragraph 15 must be construed in no other way except that it was plainly meant to refer to payment in the hands of the employee."

The learned judge further says in his judgment that an illuminating aid in construing the word may be found in examining the same and other paragraphs in the Schedule. In this connection he observes that the provision of paragraph 15 itself seeks to remove any inherent doubt in the language in the case of payment made to a director who is not a whole time service director, and that other paragraphs in the Schedule should also be looked up to determine the true meaning of paragraph 15. He then goes on to say that if one looks at the other paragraphs it would seem clear that the exemption is applicable only to those who have the money in their hands because those paragraphs relate to emoluments, income, pensions, allowances and sums received by the recipient. He concludes his judgment by saying that if the arguments run along the line that the words of paragraph 15 are wide enough to cover payment either by the employer or money received by the employee, and it is a matter of choice which one revenue would elect to exempt, then it is a matter of discretion and not right for revenue to act and the fact that revenue has chosen the employee rather than the employer is therefore no ground for asking for redress.

The appeal from the learned judge has been brought on six separate grounds as set out in the memorandum of appeal. Four of those grounds are in relation to the construction of section 127 and paragraph 15 of Schedule 6 of the Act. As the learned counsel for the appellant, Mr. N.T. Rajah, stated at the very commencement of his submissions, the answer to the appeal lies in the interpretation of section 127 read in conjunction with paragraph 15 of Schedule 6. The relevant part of section 127(1) provides that "notwithstanding any other provision of the Act, any income specified in Part I of Schedule 6 shall, subject to this section, be exempt from tax." The relevant part of paragraph 15 of Schedule 6 speaks of "a payment made by an employer to an employee of his as compensation for loss of employment in respect of so much of the payment as does not exceed an amount ascertained by multiplying the sum of $2,000 by the number of completed years of service with that employer."

Now the universal rule in construing statutes, as in construing all other written instruments, is that the grammatical and ordinary sense of the word is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further (*per* Lord Wensleydale in *Grey* v. *Pearson*[1]). In this connection counsel for the appellants also referred to the cases of *Vacher & Sons Ltd.* v. *London Society of Compositors,*[2] *Quebec Railways Light, Heat & Power Co. Ltd.* v. *Vandry,*[3] *Cargo ex Argos,*[4] *Vestry of the Parish of St. John* v. *Henry Horace Powell Cotton,*[5] the principles set out in those cases being also applicable to taxing acts. As regards the other principles relating to taxing or fiscal Acts, he cited the following passage from 20 *Halsbury's* Laws of England, 3rd Edition, page 27 paragraph 32:

"In the construction of a taxing Act the court has primary regard to the statutory words themselves and to their proper judicial construction. Particular words must be construed in their context; it cannot be assumed that a word is used in the same sense throughout an Act.

Taxing Acts are to be construed strictly, in the sense that one has to look merely at what is clearly said, there being no room for any intendment; but a fair and reasonable construction must be given to the language without leaning to one side or the other. Whether in applying the terms of the charge or the terms of an exemption, no considerations of equity or hardship affect the construction of the Act.

In considering the application of the Income Tax Acts to particular transactions and documents, the true legal rights of the parties are to be regarded, irrespective of a mere name given to the transaction or document; but this rule does not authorise any *a priori* construction of a legal situation for the purpose of attracting tax to it, or allowing escape from liability."

Reference was also made to *Oriental Bank Corporation* v. *Wright*[6] for the proposition that any charge upon the subject must be shown by clear and unambiguous language.

As regards the passage from the learned judge's judgment which I have cited earlier, counsel for the appellants said that it would appear that the learned judge was referring to the mischief rule of construction, and went on to submit that the legislation in question is not directed to any particular mischief, thus arriving at the crux of his argument that exempt income is income which is exempt from payment of income tax on the part of the employer as well as the employee. The learned counsel then contrasted paragraph 25 of Schedule 6 which speaks of sums received by way of gratuity and paragraph 24 which relates to "any sums paid by way or in the nature of a scholarship or other similar grant or allowance to an individual". Here he referred to the case of *Inland Revenue Commissioners* v. *Hinchy.*[7] This of course was tantamount to his argument which he had put

forward in the court below that paragraph 15 does not use the words "received by the employee".

In referring to a passage in the learned judge's judgment that it would be highly unreasonable to ask an employee to pay tax when he had already had to suffer the fate of having to lose the means of doing so, the learned counsel submitted that the learned judge misapprehended his arguments in the court below, because at all times his submission was that income exempt from income tax was exempt whether in the hands of the employee or paid out by the employer. As regards the learned judge's hypothesis that revenue had the choice to exempt either the employer or the employee, counsel submitted that there was no discretion given to revenue. He finally submitted on the authority of *Secretary of State in Council of India* v. *Sir Andrew Scoble*,[8] that where the taxpayer is called upon to prove the negative the onus is on revenue to show what is taxable.

Considering all the arguments put forward on behalf of the appellants in support of this appeal, I think I am right in thinking that the case for the appellants rests substantially on the argument that income exempt from income tax is exempt both as income in the hands of the employee as well as a payment out by the employer. I do not think I can accept that argument, because in my judgment the fallacy in that argument lies in confusing income with outgoings. A payment made by an employer can be rightly called income for the employee. I do not see how it can be called income for the employer.

The general heading of paragraph 15 of Schedule 6 is "Exemptions from Tax" and part I is headed "Income which is exempt". Part II is headed "Exempt Institutions, Authorities, Persons and Funds". The whole of Schedule 6 therefore, speaks of exemptions from tax of "income". Reading section 127 in conjunction with paragraph 15 of Schedule 6, I do not think I can arrive at any conclusion other than that income in the nature of a payment made by an employer to an employee as compensation for loss of employment is exempt from income tax. As far as the employer is concerned the payment made by him is not his income. He can get what he pays to his employee deducted from his gross income for the purpose of assessment of his income tax only if that is a legitimate outgoing and expense wholly incurred in the production of his gross income as provided by law. It is clearly for this reason that both the Special Commissioners and the learned judge referred to section 33 of the Income Tax Act.

The Special Commissioners said in their case stated:

"In our opinion the fact that the Appellant was under an obligation to make the redundancy payments did not make the expenditure in this case an outgoing or expense wholly and exclusively incurred in the production of income for the purposes of section 33(1) of our Income Tax Act, 1967. And it must be finally observed that the said payment of the $26,023 to the workers was made in order to enable it to sell its rubber plantation and to terminate its business of rubber planting rather than to enable it to carry on that business and to produce income. We, therefore, found that the redundancy payment was not an outgoing or expense incurred by the Appellant in the production of income under section 33(1) of the Income Tax Act, 1967, and held that the said sum of $26,023 was not deductible in ascertaining its adjusted income for the year of assessment 1974."

That opinion of the Special Commissioners was accepted by the learned judge. I think all I need say is that both the Special Commissioners and the learned judge were right in arriving at their conclusions.

I would dismiss the appeal with costs.

Syed Othman F.J. and **Abdul Hamid J.** concurred.

Appeal dismissed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones.*

PALANIAPPA CHETTIAR v. LAKSHAMANAN CHETTIAR

[F.C. (Gill C.J. (Malaya), Syed Othman F.J. and Abdul Hamid J.) October 7, 1978]

[Kuala Lumpur — Federal Court Civil Appeal No. 149 of 1977]

Hindu Law — Joint Hindu family — Property belonging to Joint Hindu Family transferred by Karta — Claim by other member of joint Hindu family.

The respondent had applied for a declaration that the transfer of a piece of land comprising an area of about 40 acres effected by one Arunasalam Chettiar (deceased) in favour of the appellant was void as against the respondent. The deceased Arunasalam Chettiar who was the Karta of a joint Hindu family had bought the land at a public auction from funds belonging to the joint Hindu family. The land was rubber land and as the Karta was already the owner of about 100 acres of rubber land and in order to avoid the rubber regulations which were applicable to owners of rubber estates of over 100 acres the Karta transferred the land to the appellant. Subsequently there were differences between the Karta and the appellant and the Karta claimed the return of the land. The Privy Council dismissed the Karta's claim on the ground that he had practised a deceit on the public administration (see [1962] M.L.J. 143). The respondent claimed that the decision of the Privy Council was not binding on him and claimed his one-third undivided share in the land. Ajaib Singh J. declared that the land was held by the appellant in trust for and on behalf of the joint Hindu family and that the land should be equally divided between the Karta, the appellant and the respondent. The appellant appealed.

Held: (1) under Hindu law where a member of a joint Hindu family governed by the Mitakshara law sells or mortgages more than his own interest in the joint Hindu family, the alienation not being one for legal necessity or for payment by a father of an antecedent debt, the other members or persons to whom their interest in the property have passed, are entitled to have the alienation set aside to the extent of their own interest therein;

(2) in this case the Karta had transferred the whole of the land to the appellant and the appellant was clearly not entitled to retain the one-third share which rightly belonged to the respondent as the third co-parcener;

(3) the appeal should be allowed to the extent that the reference in the declaration of the High Court to the Karta or his estate should be deleted and that the order be for payment out of the proceeds of sale of land of the respondent's one-third share.

Cases referred to:-

(1) *Holman* v. *Johnson* (1775) 1 Cowp. 341, 343; 98 E.R. 1120, 1121.

(2) *Chung Guat Hooi* v. *G.H. Goh* [1954] M.L.J. 131.

HIGH COURT.

Atma Singh Gill for the plaintiff.

N.A. Marjoribanks for the defendant.

Cur. Adv. Vult.